

du Treil, Lundin & Rackley, Inc.

A Subsidiary of A.D. Ring, P.A.

DOCKET FILE COPY ORIGINAL



October 29, 1997

RECEIVED

OCT 30 1997

FCC MAIL ROOM

Via Federal Express

Mr. William F. Caton
Secretary
Federal Communications
Commission
1900 M. Street, NW
Washington, DC 20054

Re: Reply to Petitions for
Reconsideration in MM Docket
No. 96-58

Dear Mr. Caton:

Attached are the original and 11 copies of a Petition for Reconsideration of du Treil, Lundin & Rackley, Inc. in the *Matter of Amendments of Parts 73 and 74 of the Commission's Rules to Permit Certain Minor Changes in Broadcast Facilities Without a Construction Permit* in MM Docket No. 96-58.

We would request that you kindly date stamp one copy as received by you and return it to us in the attached stamped, self-addressed envelope.

If there are questions concerning this filing please contact us at the number below.

Sincerely,

Louis R. du Treil, Sr.

enclosures

No. of Copies rec'd
List ABCDE

0+11

240 N. Washington Blvd.
Suite 700
Sarasota • Florida 34236-5929
941 366-2611
941 366-5533 FAX

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC, 20054

In the Matter of Amendments of)
Parts 73 & 74 of the Commission's)
Rules to Permit Certain Minor)
Changes in Broadcast Facilities)
Without a Construction Permit)

Docket No. 96-58

RECEIVED
OCT 30 1997
FCC MAIL ROOM

Petition for Reconsideration
from du Treil, Lundin & Rackley, Inc.

This Petition for Reconsideration is submitted on behalf of the consulting engineering firm of du Treil, Lundin and Rackley, Inc. (**dlr**). This firm and its predecessors have been practicing consulting communications engineering before the Federal Communications Commission (FCC) for more than 50 years. The firm has participated in this proceeding and commends the FCC for a majority of the actions taken in the Report and Order (R&O).

The purpose of **dlr**'s petition is to address a critical issue raised in the FCC's R&O and request reconsideration of the position taken by the FCC.

Paragraph 9 of the R&O contains the FCC's discussion concerning increases in effective radiated power (ERP) for non-directional, non-grandfathered and non-contour protection FM commercial stations, and decreases in ERP. The paragraph contains footnote #5, which states:

"If the Federal Aviation Administration ("FAA") has issued a determination limiting the ERP of the station to a specific value due to electromagnetic interference (EMI) concerns, the licensee or permittee must obtain a new written determination of no hazard from the agency for the proposed power level prior to implementing the power increase and filing the license application with the FCC. The FAA's determination must be supplied with the license application to cover the increased power. Failure to do so will be sufficient grounds for the Mass Media Bureau to require that station to reduce power to the value specified on its construction permit or license pursuant to 47 C.F.R. Section 73.1620(C) regardless of whether or not any actual interference has been reported to the FCC."

A similar statement is included in footnote 21 in paragraph 26 of the R&O [use of formerly licensed main facilities as auxiliary facilities (AM, FM & TV)].

dLR is dismayed with the FCC's decision to require FAA approval for EMI issues, and strongly opposes this action. **dLR** encourages the FCC to reconsider this action and eliminate the requirement to receive an FAA determination with regard to EMI issues.

The FCC, not the FAA, is the government body which regulates use of the electromagnetic spectrum. There is no question whether the FAA should determine if a structure poses a hazard to air navigation. However, the FAA is not the agency, nor does it have the expertise, to determine electromagnetic interference (EMI). This is the responsibility of the FCC. The FCC must not abrogate its responsibility to regulate the electromagnetic spectrum.

The EMI computer model used by the FAA has long been a controversial issue. It does not provide reasonable and realistic results. Most major airports in the country should be blanketed by interference if the program's results are accepted. Based on results of the FAA's EMI program, the new airport at Denver should never have been built. The FCC should not be basing regulation of the electromagnetic spectrum on EMI decisions from the FAA. ¹

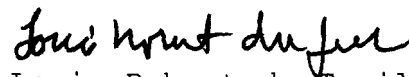
¹ It is noted the FCC is proposing to delete an FM allotment, channel 298A, at Lafayette, Georgia based on the FAA's Airspace Analysis Model (AAM), the FAA EMI computer program (Notice of Proposed Rule Making, MM Docket 97-196). Whether the FCC decides to delete the FM allotment is not the issue. However, **dLR** believes that the FCC's deletion of an FM allotment based on the FAA's controversial EMI program sets a terrible precedent.

In summary, **dLR** strongly requests the FCC to reconsider its decision and not rely on an FAA determination for EMI issues.

Respectfully Submitted,


Louis R. du Treil, Sr.


John A. Lundin


Louis Robert du Treil, Jr.


W. Jeffrey Reynolds

du Treil, Lundin & Rackley, Inc.
240 North Washington Boulevard
Suite 700
Sarasota, FL 34236

(941) 366-2611

October 29, 1997